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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. $10,594.00 IN U.S. CURRENCY, Defendant.	)	Case No. 07cv2007-DMS(WMc) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT BY DEFAULT AS TO THE INTEREST OF AMBROSIO ARELLANO, ROSA MARIA ARELLANO, AND ALL POTENTIAL CLAIMANTS DATE: August 29, 2008 TIME: 1:30 p.m. CTRM: 10

I

MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction

This matter comes before the Court on Plaintiff's motion for default judgment. The verified complaint commencing this action against the Defendant was filed October 17, 2007, alleging forfeiture pursuant to Title 21, United States Code, Section 881(a)(6) (forfeiture of proceeds of narcotics). The complaint was verified by Task Force Officer Nancy Zuniga-Ryan. The present motion for default judgment seeks the forfeiture of the interest of Ambrosio Arellano, Rosa Maria Arellano, and all potential claimants.

B. Statement of the Case

1. On October 17, 2007, a Complaint for Forfeiture was filed in the above action in the United States District Court for the Southern District of California against the above defendant.

EXHIBIT 1

On November 9, 2007, the defendant was seized and arrested by a duly authorized United States Marshal, who thereafter took possession and custody of the defendant, pursuant to the Court's Order appointing the United States Marshal as custodian, dated October 26, 2007.

2. On November 21 and 28, and December 5, 2007, pursuant to Rule G(5) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims, notice was published in the San Diego Commerce.

3. On November 7, 2007, a Notice of Complaint and a copy of the Complaint for Forfeiture were sent by certified mail as follows:

Name and address	Article No.	Result
Ambrosio Arellano Rosa Maria Arellano 1126 Bobolink Drive Vista, CA 92083	7004 2510 0003 3013 3073	Signed for as received on November 13, 2007.
Donovan J. Dunnion Attorney at Law 600 West Broadway, Suite 1550 San Diego, CA 92101	7004 2510 0003 3013 3066	Signed for as received on November 8, 2007.

From the time of said notice, no claim or answer has been filed regarding the above-named defendant.

On July 8, 2008, a Declaration of and Request for Clerk's Entry of Default was filed in this case. A Clerk's Entry of Default was issued on July 9, 2008, and a copy is hereby attached as Exhibit 2.

C. Statement of Facts

As part of an investigation agents began a surveillance of the a residence on Bobolink Drive in Vista. Agents observed a high level of foot traffic consistent with drug sales. Based on this as well as other information acquired during the investigation, agents obtained a federally authorized search warrant for the residence on Bobolink Drive.

On May 17, 2007, at approximately 6:00 a.m., agents served the search warrant on the residence. When the agents served the warrant there were eight people at the residence, including Ambrosio Arellano and Rosa Arellano. Ambrosio and Rosa Arellano were encountered in the master bedroom of the residence. When agents searched the master bedroom they located items of dominion and control related to both Ambrosio and Rosa Arellano, an unloaded 9mm handgun, a cornstarch box containing a white powdery substance, 20 bags of methamphetamine totaling 73.26 grams (on the porch under the bedroom window), pay and owe sheets, and $594.00 in U.S. Currency.

In the dining room of the house a detective removed some plastic flowers from a vase and removed 7 baggies of cocaine packaged in quantities consistent with sales. In the rest of the house agents located 9mm ammunition, 7.2 grams of meth, 1.2 grams of marijuana, 2 glass pipes, a digital scale, and packaging material. A detective also located a small door in the ceiling near the bedrooms. There was a metal safe that contained paperwork with Ambrosio's name on it, and $10,000.00 in U.S. Currency. Ambrosio admitted this was his currency, and claimed to have earned it working as a roofer at $400.00 per week.

Ulises Contreras was contacted in the residence in the room that contained approximately 7 grams of methamphetamine and the marijuana. Ulises stated he used to sell drugs for Rosa Arellano, but had purchased the drugs he now possessed for $200.00.

D. Deadlines for Filing a Claim and Answer

This civil forfeiture action is an in rem proceeding which is governed by Rule G(5) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims. Pursuant to Rule G(5), a verified claim must be filed with the Clerk of the United States District Court, Southern District of California, with a copy to the Government attorney, within thirty-five (35) days after service of the Notice of Judicial Forfeiture Proceedings, or within such additional time as the court may allow. An answer must be filed and served within twenty (20) days thereafter, pursuant to Title 18, United States Code, Section 983(a)(4)(B).

Supplemental Rule G(5) provides in pertinent part: "The claim must: (A) identify the specific property claimed; (B) identify the claimant and state the claimant's interest in the property; (C) be signed by the claimant under penalty of perjury; and (D) be served on the government attorney designated under Rule G(4)(a)(ii)(C) or (b)(ii)(D).

The plaintiff served notice of forfeiture on all known potential claimants on November 7, 2007. From the time of said notice, no claim or answer has been filed by any potential claimants regarding the above-named defendant. (See Declaration of David M. McNees, attached hereto as Exhibit 3.)

E. The Government Establishes Its Case by a Preponderance of the Evidence

Pursuant to the Civil Asset Forfeiture Reform Act of 2000 the burden of proof in civil forfeiture cases is a preponderance of the evidence. Title 18, United States Code, Section 983(c) states in pertinent part:

> In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property -
>
> (1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;
>
> (2) the Government may use evidence gathered after the filing of the complaint for forfeiture to establish, by a preponderance of the evidence, that the property is subject to forfeiture; and
>
> (3) if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

The Government's evidence is undisputed by any claimant. Thus, the Government has shown by a preponderance of the evidence that the defendant was property involved in a transaction or attempted transaction, or was property traceable to property involved in violation of Chapter 13, Title 21, United States Code, pursuant to Title 21, United States Code, Section 881(a)(6).

Pursuant to the allegations in the verified complaint that the defendant property constitutes money or other things of value furnished in exchange for a controlled substance, the Government has both proven its case by a preponderance of the evidence and established the requisite nexus between the defendant and the offense.

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II

CONCLUSION

For the foregoing reasons, it is requested that the interest of Ambrosio Arellano, Rosa Maria Arellano, and any other potential claimants be ordered condemned and forfeited to the United States according to the request herein.

DATED: July 22, 2008

KAREN P. HEWITT
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s/David M. McNees

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